

AMENDED IN SENATE JUNE 28, 2004
AMENDED IN SENATE JUNE 16, 2004
AMENDED IN ASSEMBLY MAY 24, 2004
AMENDED IN ASSEMBLY MAY 5, 2004
AMENDED IN ASSEMBLY APRIL 27, 2004
AMENDED IN ASSEMBLY APRIL 16, 2004
AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2611

Introduced by Assembly Member Simitian

February 20, 2004

An act to amend Section 368 of the Penal Code, and to amend Sections 15656 and 15657 of, and to add Section 15657.5 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Simitian. Elder and dependent adult abuse.

(1) Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

Existing law establishes criminal penalties for the willful abuse of an elder or dependent adult, when the person who permits or inflicts the abuse has knowledge that the victim is an elder or dependent adult.

Under existing law, with respect to theft, embezzlement, forgery, fraud, or identity theft perpetrated against an elder or dependent adult by certain persons, the applicable fine or imprisonment is determined based on whether the money, labor, goods, services, or real or personal property taken or obtained exceeds a value of \$400.

~~This bill would revise the above standard to impose the existing penalties regardless of whether the person has knowledge that the victim may be an elder or dependent adult and would make conforming changes.~~ *make technical changes to these provisions. This bill would also raise the \$400 threshold amount to \$800, only if AB 2705 is enacted and becomes effective on or before January 1, 2005.* By changing the definition of an existing crime this bill would impose a state-mandated local program.

(2) Existing law includes provisions relating to the award of attorney's fees and costs, and damages to a plaintiff, when it is proven by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would revise these provisions to change the standard of proof for the commission of financial abuse to a preponderance of the evidence, but to permit additional recovery where there is clear and convincing evidence of recklessness, oppression, fraud, or malice.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes
4 against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults

1 may be confused, on various medications, mentally or physically
2 impaired, or incompetent, and therefore less able to protect
3 themselves, to understand or report criminal conduct, or to testify
4 in court proceedings on their own behalf.

5 (b) (1) Any person *who knows or reasonably should know that*
6 *a person is an elder or dependent adult and* who, under
7 circumstances or conditions likely to produce great bodily harm or
8 death, willfully causes or permits any elder or dependent adult to
9 suffer, or inflicts thereon unjustifiable physical pain or mental
10 suffering, or having the care or custody of any elder or dependent
11 adult, willfully causes or permits the person or health of the elder
12 or dependent adult to be injured, or willfully causes or permits the
13 elder or dependent adult to be placed in a situation in which his or
14 her person or health is endangered, is punishable by imprisonment
15 in a county jail not exceeding one year, or by a fine not to exceed
16 six thousand dollars (\$6,000), or by both that fine and
17 imprisonment, or by imprisonment in the state prison for two,
18 three, or four years.

19 (2) If in the commission of an offense described in paragraph
20 (1), the victim suffers great bodily injury, as defined in Section
21 12022.7, the defendant shall receive an additional term in the state
22 prison as follows:

23 (A) Three years if the victim is under 70 years of age.

24 (B) Five years if the victim is 70 years of age or older.

25 (3) If in the commission of an offense described in paragraph
26 (1), the defendant proximately causes the death of the victim, the
27 defendant shall receive an additional term in the state prison as
28 follows:

29 (A) Five years if the victim is under 70 years of age.

30 (B) Seven years if the victim is 70 years of age or older.

31 (c) Any person *who knows or reasonably should know that a*
32 *person is an elder or dependent adult and* who, under
33 circumstances or conditions other than those likely to produce
34 great bodily harm or death, willfully causes or permits any elder
35 or dependent adult to suffer, or inflicts thereon unjustifiable
36 physical pain or mental suffering, or having the care or custody of
37 any elder or dependent adult, willfully causes or permits the person
38 or health of the elder or dependent adult to be injured or willfully
39 causes or permits the elder or dependent adult to be placed in a
40 situation in which his or her person or health may be endangered,

1 is guilty of a misdemeanor. A second or subsequent violation of
2 this subdivision is ~~punishable by~~ *subject to* a fine not to exceed two
3 thousand dollars (\$2,000), or by imprisonment in a county jail not
4 to exceed one year, or by both that fine and imprisonment.

5 (d) Any person who is not a caretaker who violates any
6 provision of law proscribing theft, embezzlement, forgery, or
7 fraud, or who violates Section 530.5 proscribing identity theft,
8 with respect to the property or personal identifying information of
9 an elder or a dependent adult, *and who knows or reasonably should*
10 *know that another person is an elder or dependent adult*, is subject
11 to imprisonment in a county jail not exceeding one year, or in the
12 state prison for two, three, or four years, when the money, labor,
13 goods, services, or real or personal property taken or obtained is
14 of a value exceeding four hundred dollars (\$400); and by a fine not
15 exceeding one thousand dollars (\$1,000), by imprisonment in a
16 county jail not exceeding one year, or by both that fine and
17 imprisonment, when the money, labor, goods, services, or real or
18 personal property taken or obtained is of a value not exceeding
19 four hundred dollars (\$400).

20 (e) Any caretaker of an elder or a dependent adult who violates
21 any provision of law proscribing theft, embezzlement, forgery, or
22 fraud, or who violates Section 530.5 proscribing identity theft,
23 with respect to the property or personal identifying information of
24 that elder or dependent adult, is subject to imprisonment in a
25 county jail not exceeding one year, or in the state prison for two,
26 three, or four years when the money, labor, goods, services, or real
27 or personal property taken or obtained is of a value exceeding four
28 hundred dollars (\$400), and by a fine not exceeding one thousand
29 dollars (\$1,000), by imprisonment in a county jail not exceeding
30 one year, or by both that fine and imprisonment, when the money,
31 labor, goods, services, or real or personal property taken or
32 obtained is of a value not exceeding four hundred dollars (\$400).

33 (f) Any person who commits the false imprisonment of an elder
34 or a dependent adult by the use of violence, menace, fraud, or
35 deceit is subject to imprisonment in the state prison for two, three,
36 or four years.

37 (g) As used in this section, “elder” means any person who is
38 65 years of age or older.

39 (h) As used in this section, “dependent adult” means any
40 person who is between the ages of 18 and 64, who has physical or

1 mental limitations which restrict his or her ability to carry out
2 normal activities or to protect his or her rights, including, but not
3 limited to, persons who have physical or developmental
4 disabilities or whose physical or mental abilities have diminished
5 because of age. “Dependent adult” includes any person between
6 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour
7 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
8 the Health and Safety Code.

9 (i) As used in this section, “caretaker” means any person who
10 has the care, custody, or control of, or who stands in a position of
11 trust with, an elder or a dependent adult.

12 (j) Nothing in this section shall preclude prosecution under
13 both this section and Section 187 or 12022.7 or any other provision
14 of law. However, a person shall not receive an additional term of
15 imprisonment under both paragraphs (2) and (3) of subdivision (b)
16 for any single offense, nor shall a person receive an additional term
17 of imprisonment under both Section 12022.7 and paragraph (2) or
18 (3) of subdivision (b) for any single offense.

19 SEC. 1.5. *Section 368 of the Penal Code is amended to read:*

20 368. (a) The Legislature finds and declares that crimes
21 against elders and dependent adults are deserving of special
22 consideration and protection, not unlike the special protections
23 provided for minor children, because elders and dependent adults
24 may be confused, on various medications, mentally or physically
25 impaired, or incompetent, and therefore less able to protect
26 themselves, to understand or report criminal conduct, or to testify
27 in court proceedings on their own behalf.

28 (b) (1) Any person *who knows or reasonably should know that*
29 *a person is an elder or dependent adult and* who, under
30 circumstances or conditions likely to produce great bodily harm or
31 death, willfully causes or permits any elder or dependent adult,
32 ~~with knowledge that he or she is an elder or a dependent adult,~~ to
33 suffer, or inflicts thereon unjustifiable physical pain or mental
34 suffering, or having the care or custody of any elder or dependent
35 adult, willfully causes or permits the person or health of the elder
36 or dependent adult to be injured, or willfully causes or permits the
37 elder or dependent adult to be placed in a situation in which his or
38 her person or health is endangered, is punishable by imprisonment
39 in a county jail not exceeding one year, or by a fine not to exceed
40 six thousand dollars (\$6,000), or by both that fine and

1 imprisonment, or by imprisonment in the state prison for two,
2 three, or four years.

3 (2) If in the commission of an offense described in paragraph
4 (1), the victim suffers great bodily injury, as defined in Section
5 12022.7, the defendant shall receive an additional term in the state
6 prison as follows:

7 (A) Three years if the victim is under 70 years of age.

8 (B) Five years if the victim is 70 years of age or older.

9 (3) If in the commission of an offense described in paragraph
10 (1), the defendant proximately causes the death of the victim, the
11 defendant shall receive an additional term in the state prison as
12 follows:

13 (A) Five years if the victim is under 70 years of age.

14 (B) Seven years if the victim is 70 years of age or older.

15 (c) Any person *who knows or reasonably should know that a*
16 *person is an elder or dependent adult and* who, under
17 circumstances or conditions other than those likely to produce
18 great bodily harm or death, willfully causes or permits any elder
19 or dependent adult, ~~with knowledge that he or she is an elder or a~~
20 ~~dependent adult,~~ to suffer, or inflicts thereon unjustifiable physical
21 pain or mental suffering, or having the care or custody of any elder
22 or dependent adult, willfully causes or permits the person or health
23 of the elder or dependent adult to be injured or willfully causes or
24 permits the elder or dependent adult to be placed in a situation in
25 which his or her person or health may be endangered, is guilty of
26 a misdemeanor. A second or subsequent violation of this
27 subdivision is punishable by a fine not to exceed two thousand
28 dollars (\$2,000), or by imprisonment in a county jail not to exceed
29 one year, or by both that fine and imprisonment.

30 (d) Any person who is not a caretaker who violates any
31 provision of law proscribing theft, embezzlement, forgery, or
32 fraud, or who violates Section 530.5 proscribing identity theft,
33 with respect to the property or personal identifying information of
34 an elder or a dependent adult, and who knows or reasonably should
35 know that the victim is an elder or a dependent adult, is ~~punishable~~
36 ~~by~~ *subject to* imprisonment in a county jail not exceeding one year,
37 or in the state prison for two, three, or four years, when the money,
38 labor, goods, services, or real or personal property taken or
39 obtained is of a value exceeding ~~four~~ *eight* hundred dollars ~~(\$400)~~
40 ~~(\$800)~~; and by a fine not exceeding one thousand dollars (\$1,000),

1 by imprisonment in a county jail not exceeding one year, or by both
2 that fine and imprisonment, when the money, labor, goods,
3 services, or real or personal property taken or obtained is of a value
4 not exceeding ~~four~~ *eight* hundred dollars ~~(\$400)~~ *(\$800)*.

5 (e) Any caretaker of an elder or a dependent adult who violates
6 any provision of law proscribing theft, embezzlement, forgery, or
7 fraud, or who violates Section 530.5 proscribing identity theft,
8 with respect to the property or personal identifying information of
9 that elder or dependent adult, is ~~punishable by~~ *subject to*
10 imprisonment in a county jail not exceeding one year, or in the state
11 prison for two, three, or four years when the money, labor, goods,
12 services, or real or personal property taken or obtained is of a value
13 exceeding ~~four~~ *eight* hundred dollars ~~(\$400)~~ *(\$800)*, and by a fine
14 not exceeding one thousand dollars (\$1,000), by imprisonment in
15 a county jail not exceeding one year, or by both that fine and
16 imprisonment, when the money, labor, goods, services, or real or
17 personal property taken or obtained is of a value not exceeding
18 ~~four~~ *eight* hundred dollars ~~(\$400)~~ *(\$800)*.

19 (f) Any person who commits the false imprisonment of an elder
20 or a dependent adult by the use of violence, menace, fraud, or
21 deceit is ~~punishable by~~ *subject to* imprisonment in the state prison
22 for two, three, or four years.

23 (g) As used in this section, “elder” means any person who is
24 65 years of age or older.

25 (h) As used in this section, “dependent adult” means any
26 person who is between the ages of 18 and 64, who has physical or
27 mental limitations which restrict his or her ability to carry out
28 normal activities or to protect his or her rights, including, but not
29 limited to, persons who have physical or developmental
30 disabilities or whose physical or mental abilities have diminished
31 because of age. “Dependent adult” includes any person between
32 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour
33 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
34 the Health and Safety Code.

35 (i) As used in this section, “caretaker” means any person who
36 has the care, custody, or control of, or who stands in a position of
37 trust with, an elder or a dependent adult.

38 (j) Nothing in this section shall preclude prosecution under
39 both this section and Section 187 or 12022.7 or any other provision
40 of law. However, a person shall not receive an additional term of

1 imprisonment under both paragraphs (2) and (3) of subdivision (b)
2 for any single offense, nor shall a person receive an additional term
3 of imprisonment under both Section 12022.7 and paragraph (2) or
4 (3) of subdivision (b) for any single offense.

5 SEC. 2. Section 15656 of the Welfare and Institutions Code is
6 amended to read:

7 15656. (a) Any person *who knows or reasonably should*
8 *know that a person is an elder or dependent adult and* who, under
9 circumstances or conditions likely to produce great bodily harm or
10 death, willfully causes or permits any elder or dependent adult to
11 suffer, or inflicts unjustifiable physical pain or mental suffering
12 upon him or her, or having the care or custody of any elder or
13 dependent adult, willfully causes or permits the person or health
14 of the elder or dependent adult to be injured, or willfully causes or
15 permits the elder or dependent adult to be placed in a situation such
16 that his or her person or health is endangered, is punishable by
17 imprisonment in the county jail not exceeding one year, or in the
18 state prison for two, three, or four years.

19 (b) Any person *who knows or reasonably should know that a*
20 *person is an elder or dependent adult and* who, under
21 circumstances or conditions other than those likely to produce
22 great bodily harm or death, willfully causes or permits any elder
23 or dependent adult to suffer, or inflicts unjustifiable physical pain
24 or mental suffering on him or her, or having the care or custody of
25 any elder or dependent adult, willfully causes or permits the person
26 or health of the elder or dependent adult to be injured or willfully
27 causes or permits the elder or dependent adult to be placed in a
28 situation such that his or her person or health may be endangered,
29 is guilty of a misdemeanor.

30 (c) Any caretaker of an elder or a dependent adult who violates
31 any provision of law prescribing theft or embezzlement, with
32 respect to the property of that elder or dependent adult, is
33 punishable by imprisonment in the county jail not exceeding one
34 year, or in the state prison for two, three, or four years when the
35 money, labor, or real or personal property taken is of a value
36 exceeding four hundred dollars (\$400), and by a fine not exceeding
37 one thousand dollars (\$1,000), or by imprisonment in the county
38 jail not exceeding one year, or by both that imprisonment and fine,
39 when the money, labor, or real or personal property taken is of a
40 value not exceeding four hundred dollars (\$400).

(d) As used in this section, “caretaker” means any person who has the care, custody, or control of or who stands in a position of trust with, an elder or a dependent adult.

(e) Conduct covered in subdivision (b) of Section 15610.57 shall not be subject to this section.

~~SEC. 2.—~~

SEC. 2.5. Section 15656 of the Welfare and Institutions Code is amended to read:

15656. (a) Any person *who knows or reasonably should know that a person is an elder or dependent adult and* who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, ~~with knowledge that he or she is an elder or a dependent adult,~~ to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person *who knows or reasonably should know that a person is an elder or dependent adult and* who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, ~~with knowledge that he or she is an elder or a dependent adult,~~ to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law prescribing theft or embezzlement, with respect to the property of that elder or dependent adult, is ~~punishable by~~ *subject to* imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding ~~four~~ *eight* hundred dollars ~~(\$400)~~ *(\$800)*, and

1 by a fine not exceeding one thousand dollars (\$1,000), or by
2 imprisonment in the county jail not exceeding one year, or by both
3 that imprisonment and fine, when the money, labor, or real or
4 personal property taken is of a value not exceeding ~~four~~ *eight*
5 hundred dollars (~~\$400~~) (\$800).

6 (d) As used in this section, “caretaker” means any person who
7 has the care, custody, or control of or who stands in a position of
8 trust with, an elder or a dependent adult.

9 (e) Conduct covered in subdivision (b) of Section 15610.57
10 shall not be subject to this section.

11 *SEC. 3.* Section 15657 of the Welfare and Institutions Code is
12 amended to read:

13 15657. Where it is proven by clear and convincing evidence
14 that a defendant is liable for physical abuse as defined in Section
15 15610.63, or neglect as defined in Section 15610.57, and that the
16 defendant has been guilty of recklessness, oppression, fraud, or
17 malice in the commission of this abuse, the following shall apply,
18 in addition to all other remedies otherwise provided by law:

19 (a) The court shall award to the plaintiff reasonable attorney’s
20 fees and costs. The term “costs” includes, but is not limited to,
21 reasonable fees for the services of a conservator, if any, devoted to
22 the litigation of a claim brought under this article.

23 (b) The limitations imposed by Section 377.34 of the Code of
24 Civil Procedure on the damages recoverable shall not apply.
25 However, the damages recovered shall not exceed the damages
26 permitted to be recovered pursuant to subdivision (b) of Section
27 3333.2 of the Civil Code.

28 (c) The standards set forth in subdivision (b) of Section 3294
29 of the Civil Code regarding the imposition of punitive damages on
30 an employer based upon the acts of an employee shall be satisfied
31 before any damages or attorney’s fees permitted under this section
32 may be imposed against an employer.

33 ~~SEC. 3.—~~

34 *SEC. 4.* Section 15657.5 is added to the Welfare and
35 Institutions Code, to read:

36 15657.5. (a) Where it is proven by a preponderance of the
37 evidence that a defendant is liable for financial abuse, as defined
38 in Section 15610.30, in addition to all other remedies otherwise
39 provided by law, the court shall award to the plaintiff reasonable
40 attorney’s fees and costs. The term “costs” includes, but is not

1 limited to, reasonable fees for the services of a conservator, if any,
2 devoted to the litigation of a claim brought under this article.

3 (b) Where it is proven by a preponderance of the evidence that
4 a defendant is liable for financial abuse, as defined in Section
5 15610.30, and where it is proven by clear and convincing evidence
6 that the defendant committed that abuse with recklessness,
7 oppression, fraud, or malice, in addition to reasonable attorney's
8 fees and costs set forth in subdivision (a), and all other remedies
9 otherwise provided by law, the following shall apply:

10 (1) The limitations imposed by Section 377.34 of the Code of
11 Civil Procedure on the damages recoverable shall not apply.
12 However, the damages recovered shall not exceed the damages
13 permitted to be recovered pursuant to subdivision (b) of Section
14 3333.2 of the Civil Code.

15 (2) The standards set forth in subdivision (b) of Section 3294
16 of the Civil Code regarding the imposition of punitive damages on
17 an employer based upon the acts of an employee shall be satisfied
18 before any damages or attorney's fees permitted under this section
19 may be imposed against an employer.

20 (c) Nothing in this section affects the award of punitive
21 damages under Section 3294 of the Civil Code.

22 ~~SEC. 4.—~~

23 *SEC. 5. Sections 1.5 and 2.5 of this act shall only become*
24 *operative if Assembly Bill 2705 is enacted and becomes effective*
25 *on or before January 1, 2005, in which case Sections 1 and 2 of this*
26 *act shall not become operative.*

27 *SEC. 6.* No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.